

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MAE PHILLIP JONES,

Defendant and Appellant.

D067526

(Super. Ct. No. JCF33612)

APPEAL from a judgment of the Superior Court of Imperial County,  
Christopher J. Plourd, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Barry J. Carlton and Sharon L.  
Rhodes, Deputy Attorneys General, for Plaintiff and Respondent.

## I.

### INTRODUCTION

Defendant Mae Phillip Jones appeals from a judgment after a jury convicted him of two felony counts related to an incident in which Jones attacked his fiancée. Jones contends that his conviction for committing corporal injury to a spouse or cohabitant, in violation of Penal Code<sup>1</sup> section 273.5, subd. (a), should be reversed because there is insufficient evidence to support a finding that his fiancée suffered a traumatic condition, as required by the statute. We conclude that Jones's contention is without merit, and affirm the judgment.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Factual background*

##### 1. *Evidence regarding the charged incident*

On August 9, 2014, Jones became upset when his fiancée, Monique Emery, decided to take some leftover food to a male friend, A.J. Jones yelled, "Oh, who are you going to be with? Who do you want to marry? You going to marry me or you going to marry him?" Emery explained that she was only dropping off the food for her friend and would come back to the house to eat with Jones.

Jones told Emery that he was going to go with her. The pair quarreled as Emery drove to A.J.'s house in her mother's SUV. When they reached a stoplight on the way,

---

<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

Jones grabbed Emery and shook her. Jones demanded that Emery give him the engagement ring that he had given her. Emery told him to stop touching her and to get out of the car. Jones refused to get out of the vehicle, asserting that no one could make him get out. Emery told him that if he was going to continue to act crazy, her friend A.J. would make him get out of the car.

Jones asked Emery what A.J. would do to him. Emery responded, "Nothing, but I bet you get out of my car." Jones then jumped on top of Emery and put one hand over her mouth and the other around her throat. Jones began to choke Emery, causing her to slam on the brakes. He hit Emery in the mouth. Jones then put his elbow on Emery's throat and pressed her head back.

Emery yelled at Jones to let her go, and struggled to get him off of her. Emery said, "You're going to make us crash and we're both going to die." Jones told her that he did not care. He wanted her to return the engagement ring. Emery asked him to wait until she pulled over, but he said, "No. Hopefully, you die."

Jones grabbed Emery's closed left hand and pulled her fingers back. Emery told him that he was going to break her finger. Jones replied, "I don't care. I don't care. I hope I break all of them. You going to give me my ring."

Emery screamed, "Help," "You're hurting me," and "Stop." Jones persisted, and when he got her ring finger, he forcibly took the ring off of it and said, "Ain't nobody else going to put a ring on this finger."

At that point, Jones continued to choke Emery, and she felt as if she was going to pass out. As Emery began to lose consciousness, she stomped on the brakes. Emery saw

white spots and her vision went dark. Emery's body went limp and her foot slipped off of the brake pedal. When Emery regained consciousness, she noticed that the car was moving and she stomped on the brakes. The tires screeched, and Emery held on to the steering wheel to try to avoid crashing. Emery tried to open the window to scream for help.

Residents nearby, including Emery's friend A.J., heard Emery's screams. Multiple people ran to the SUV to try to help her. Jones continued to keep one hand on Emery's throat or his arm around her neck, choking her, while he used his other hand to prevent her from unlocking the SUV's doors. Emery was crying and trying to catch her breath. At some point, the people who had come to help were able to open the doors, but they were unable to get Emery out of the vehicle because Jones was on top of her, still holding her in a chokehold. One person pepper sprayed Jones, and some of the people who came to help were able to pull Emery out of the vehicle, while A.J. and another individual pulled Jones out of the vehicle.

When police arrived, A.J. and the other individual were holding Jones on the ground. Police handcuffed Jones. One of the responding officers spoke with Emery and recorded their conversation with a body camera.

Emery was distraught and crying, and appeared to be in pain. Emery explained what had happened. She indicated that Jones had choked her, but she was not sure whether there were marks on her neck. She also indicated that her fingers were injured; she could not bend one of her fingers and thought it might be broken. Emery's hand was numb and throbbing. Fire department personnel provided Emery an icepack for her hand.

2. *Evidence of a prior domestic violence incident*

Approximately a month before the events leading to the charges in this case, police responded to a domestic dispute between Jones and Emery. A verbal argument had escalated into a physical altercation.

The argument began when Jones tried to look inside the drawers of Emery's nightstand without her permission. Emery placed herself between Jones and the nightstand. Jones struck Emery in the pelvic area with his head. He then picked Emery up, threw her on the bed, and pinned her down with his knees. Emery tried to escape, swinging her arms at Jones, but he grabbed her arms.

Jones told Emery, "If that's what I had to do, I had to put you in your place." He also said, "I'm going to do anything to or say anything to the police to get you arrested." Jones started scratching the back of his head in an attempt to cause injury to himself, presumably to make it appear as if he had been injured in the altercation.

When police interviewed Emery, she looked scared. Emery's arms had areas of redness on them. Jones's demeanor was calm, and he did not have any visible injuries. Police arrested Jones.

B. *Procedural background*

Jones was charged with one count of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4); count 1), and one count of corporal injury to a spouse or cohabitant (§ 273.5, subd. (a); count 2) based on the incident in the vehicle. The information also alleged that Jones had committed a misdemeanor domestic violence battery within seven years of the charged offense (§ 243, subd. (e)(1)), and that he

inflicted great bodily injury on the victim, as to both counts, under the enhancement applicable to cases involving domestic violence (§ 12022.7, subd. (e)). The trial court dismissed the great bodily injury enhancements before the case went to the jury.

A jury found Jones guilty on both counts. The trial court sentenced Jones to state prison for a term of four years, but suspended execution of the sentence. The court placed Jones on probation for three years and ordered him to serve one year in county jail.

Jones filed a timely notice of appeal.

### III.

#### DISCUSSION

Jones contends that his conviction for committing corporal injury to his fiancée must be reversed because there is insufficient evidence that Emery suffered a traumatic condition, as required by the statute.

"In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one. ' "The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" ' [Citations.] [¶] ' "Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which

that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder." ' ' (*People v. Smith* (2005) 37 Cal.4th 733, 738-739.)

Jones was convicted of violating section 273.5, which, at the time of Jones's offense in 2014, provided in relevant part that "[a]ny person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony . . . ." <sup>2</sup> (Former § 273.5, subd. (a) (2014).) The statute defined the term " 'traumatic condition' " as "a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, *whether of a minor or serious nature*, caused by a physical force." (*Id.*, subd. (d) (2014), italics added.) It further stated, " 'strangulation' and 'suffocation' include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck." (*Ibid.*)

The plain language of the statute makes clear that even a "minor injury [is] sufficient to satisfy the statutory definition" of a traumatic condition. (*People v. Abrego* (1993) 21 Cal.App.4th 133, 138 (*Abrego*).) Indeed, the harm required to satisfy the "traumatic condition" element of the statute is a *lesser* degree of harm than that required

---

<sup>2</sup> The relevant version of subdivision (b) of section 273.5 provided that subdivision (a) applied if the victim "is or was one or more of the following: [¶] (1) The offender's spouse or former spouse. [¶] (2) The offender's cohabitant or former cohabitant. [¶] (3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243. [¶] (4) The mother or father of the offender's child."

to satisfy other standards of harm: "Some other offenses do require higher degrees of harm to be inflicted before the crime denounced by them is committed: felony battery, section 243, subdivision (d), requires 'serious bodily injury'; and, felony assault, section 245, subdivision (a), requires 'force likely to produce great bodily injury.' But, the Legislature has clothed persons . . . in intimate relationships with greater protection *by requiring less harm to be inflicted before the offense is committed.*" (*People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952, italics added.)

Consistent with the statutory definition, the courts have defined traumatic condition as " 'a wound or *other abnormal bodily condition* resulting from the application of some external force." ' " (*Abrego, supra*, 21 Cal.App.4th at p. 137, italics added.)

Emery testified that she began to lose consciousness when Jones choked her. She saw little white spots, her vision went dark, her body became limp, and her foot slipped off the brake, all of which supports a finding that Emery lost consciousness for a brief period of time. Losing consciousness due to strangulation may clearly be considered an " 'abnormal bodily condition" ' " resulting from the application of an external force.

Jones nevertheless suggests that a "momentary" loss of consciousness is insufficient to constitute a " 'traumatic condition' " under the statute because there was no evidence that Emery had visible redness or bruising on her neck. We reject this suggestion. " 'Serious bodily injury' " for purposes of felony battery includes the "loss of

consciousness." (§ 243, subd. (f)(4).)<sup>3</sup> If a victim's loss of consciousness is sufficient to support a finding that an individual committed a battery resulting in serious bodily injury, and the Legislature has determined that *less harm* than that required to meet the serious bodily injury standard is sufficient to satisfy the "traumatic condition" standard of section 273.5, it necessarily follows that a victim's loss of consciousness must be sufficient to support a finding that an individual violated section 273.5.<sup>4</sup>

We therefore conclude that the evidence demonstrating that Emery suffered even a "momentary" loss of consciousness was sufficient to support the jury's finding that Jones was guilty of inflicting a corporal injury to a spouse or cohabitant under section 273.5.

---

<sup>3</sup> Subdivision (f)(4) of section 243 provides: "'Serious bodily injury' means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement."

<sup>4</sup> Even if we had concluded that Emery's loss of consciousness was insufficient to support Jones's conviction for violating section 273.5, there was other substantial evidence to support the finding that Jones inflicted a corporal injury on Emery that resulted in a traumatic condition. Specifically, when Jones tried to retrieve the engagement ring by pulling it off of Emery's finger, Jones pulled Emery's fingers back so far that Emery was concerned that Jones had broken one of her fingers. When officers arrived, Emery was crying and showed signs of being in pain. She told an officer that she thought her finger was broken. She stated that she could not bend one of her fingers. The jury was presented with a photograph of Emery's hand taken after the incident. Although Emery had recanted her story by the time of trial and testified that the swelling in her hand that could be observed in the photograph was due to arthritis and not Jones's conduct, the statements she made to the responding officer immediately after the incident indicated that Jones had caused the injuries to her hand. This evidence is independently sufficient to support a finding that Jones inflicted a corporal injury on Emery that resulted in a traumatic condition.

IV.  
DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.